

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Crowley et al.) Examiner: Qazi, Sabiha
Serial No: 10/540,037)
US Filing Date: June 22, 2005) Art Unit: 1612
For: **NAPHTHYRIDINE DERIVATIVES**) Confirmation No. 8856
AND THEIR USE AS FUNGICIDES) Docket No: 70189
)

Mail Stop AF
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated below:

Applicants respectfully submit that final rejection of claims 1-4 and 6-12, as obvious under § 103, is in error since Examiner provided virtually no acknowledgement or analysis of Applicants' prior response when issuing the present rejection. Each of Examiner's remaining rejections are identical, verbatim copies of the prior rejections issued on 19 October 2009. Nearly eleven pages of text in the Final Office Action are devoted to this verbatim recitation of the prior Office Action. Only one paragraph, approximately one-half of a page, contains original text devoted to analyzing Applicants' Response – itself an eleven-page communication – filed on 3 February 2010.

The entirety of Examiner's response is contained in the following three lines:

Applicant is claiming compounds and composition of the compounds which are taught by the references. Collins teaches naphthydrin compounds as fungicides. The compounds are considered obvious to one skilled in the art at the time the application was filed. (p.9)

Such cursory treatment violates Examiner's obligation to provide well-reasoned and clearly defined grounds of rejection, such as detailed in the MPEP § 706.07.

By way of summary, Applicants filed a Response on 3 February 2010 in response to a non-final Office Action issued on 19 October 2009. All outstanding rejections were issued under 35 USC §103(a) according to three reference groupings: (i) solely over FERRARINI et al.; (ii) solely over BADAWNEH et al., and (iii) as obvious over ARMITAGE et al., and COLLINS et al.

Applicants Response addressed each of Examiner's contention in a substantive response spanning eleven pages of text, complete with side by side comparisons of the reference compounds and the claimed compounds. Under each reference group, Applicants demonstrated, *inter alia*, that the reference compounds: were not within the scope of the claimed compounds; were not 'positional isomers' or 'homologues' as Examiner contended; and were not analogous art (e.g., disclosed human anti-platelet activity vs claimed agrochemical fungicidal activity).

Detailed analysis with respect to FERRARINI et al. is provided on pages 2-5 of Applicants' Response. Analysis of BADAWNEH et al. is provided on pages 5-8 of the Response. Analysis of COLLINS et al. is provided on pages 8-11 of the Response.

The Final Office Action makes no reference to Applicants remarks concerning FERRARINI et al. and BADAWNEH et al. Reference to COLLINS et al. is limited to a single sentence recited above. Examiner withdrew the rejection over ARMITAGE et al. stating that Applicants remarks were persuasive.

Applicants are unable to provide any further details upon which to direct the panel's attention since Examiner provided no analysis whatsoever of Applicants' Response.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Accordingly, the Final Office Action is insufficient to adequately explain the basis upon which Examiner maintains the present rejections based on §103. Applicants respectfully request that the analysis and remarks in the Response provide sufficient bases to overcome these outstanding rejections, and that pending claims 1-4 and 6-12 should be allowed.

A favorable reconsideration of the rejection is respectfully requested.

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7585

Date: September 13, 2010

Respectfully submitted,
/WILLIAM MULHOLLAND/
William F. Mulholland, II
Reg. No. 45,684
Attorney for Applicants